



DOCKET NO.: 03122

**IN THE UNITED STATES PATENT & TRADEMARK OFFICE**

IN RE APPLICATION OF: :  
BODARY et al. : GROUP ART UNIT: 3727  
SERIAL NO.: 10/652,038 :  
FILED: September 2, 2003 : EXAMINER: T. M. MAI  
FOR: FOOD SCOOP AND SERVING CONTAINER

**DECLARATION PURSUANT TO 37 C.F.R.1.132**

1. The Declarant, Michael G. Bodary, states that he is a co-inventor of the invention disclosed in U.S. patent application Serial No. 10/652,038.
2. Declarant further states that the results of tests results support Applicant's claim (see the paragraph bridging pages 3 and 4 of the specification) that the circumferential grain direction of a finished food scoop and serving container (hereinafter "container") according to the invention have unexpected advantages in that:
  - The finished container has an increased stiffness as compared to a container of greater thickness and having a grain direction in the direction of from the top to the bottom of the container;
  - The layout of the carton elements reduces scrap area and results in a significant paper savings.
3. The Declarant further states that the claimed cross grain design and layout saves paperboard in at least two ways:
  - The resultant layout reduces "pattern scrap" by 22.4% for current and new design detailing square inches per unit (see press layouts shown in Attachments 1 and 2 hereto).
  - The design also saves paper by allowing a lower caliper board to be used and still maintain adequate stiffness in the formed container. This is possible because


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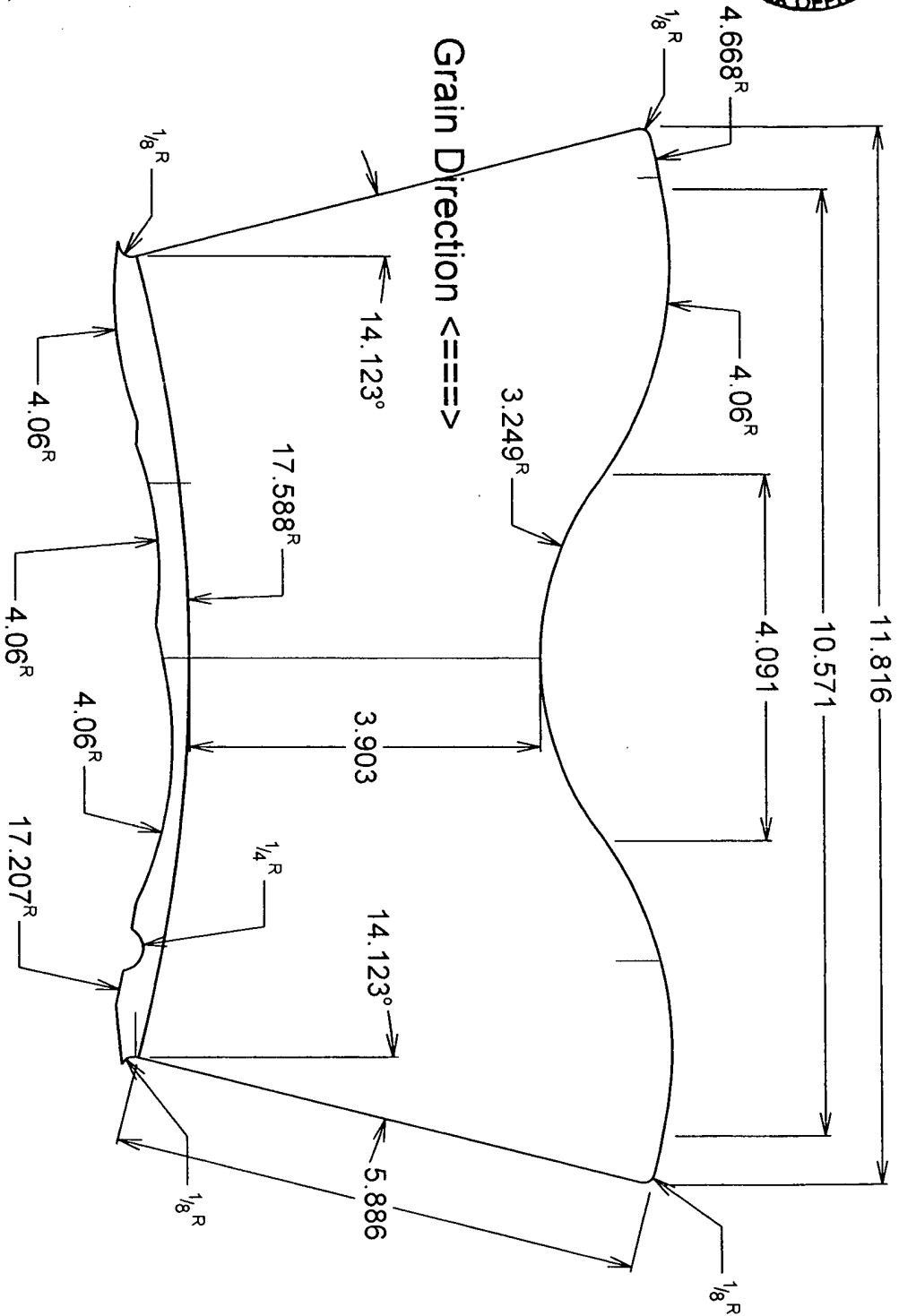
paperboard typically has twice the stiffness in the grain direction than it does in the opposite direction. Cups are traditionally made with the grain direction vertical because a rim cannot be curled in any other orientation. In contrast, the claimed container does not have a rim, and so it was possible to form the container "cross grain" and take advantage of the board's higher stiffness. In this regard, see Attachment 3 for test results detailing sidewall stiffness at a variety of calipers in both MD (Machine Grain Direction) and CD (Cross Grain Direction) orientation. The original carton was produced using 15 pt stock in the MD orientation, although it is recommended to use 12 or 13 pt stock with CD orientation due to its availability.

4. The Declarant further states that the total paper savings for this design versus the previous traditional design is 35%. Paper represents the largest portion of the total cost for this item, so significant cost savings can be enjoyed. The reduced paper usage is also a significant improvement in the overall environmental impact of this item.
5. The Declarant further states that the commercial success of the claimed container is evidenced by the fact that the container of the invention is now used by all Wendy's Restaurants of Canada.
6. Further the Declarant saith not.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date: 8/9/05

  
\_\_\_\_\_  
Michael G. BODARY



ATTACH. 1

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Customer(s): Wendy's

New Structure

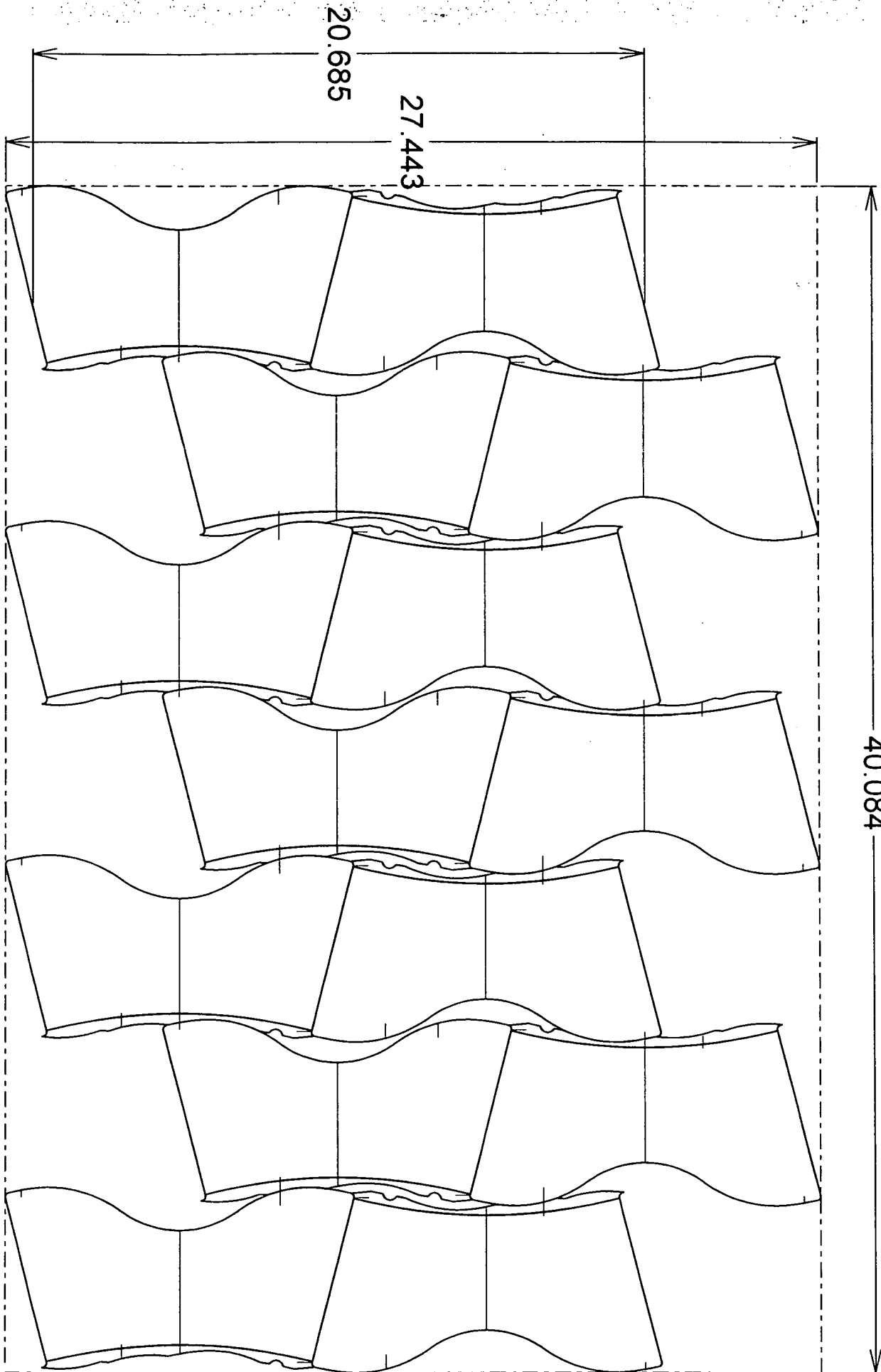
CAD

Item: Great Biggie	Size: Use 32.03 Cold Cup Tooling	Area: 54.926	Printed Side Shown
Design #: WDF05E	Material: .0125 Wall Bottom		Dopaco Inc.
Style of Carton: Conference Fry Cup	Date: 11/22/2002		Design Department

WENDY'S CANADA GREAT BRIGGIE  
STR# WDF05E(LGSTC)  
CONFERENCE FRY CUP  
AREA: 54.9263  
11/22/02

40.084

59.24 SQ INCHES  
PER UNIT.



GRAIN DIRECTION

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LEADING EDGE  
PRINTING SIDE UP

WEINUT'S UNIFORM GREEN DISC  
STR# WDF05E(LGSTC)  
CONFERENCE FRY CUP  
AREA: 54.9263  
11/22/02

40.084

20.685

27.443

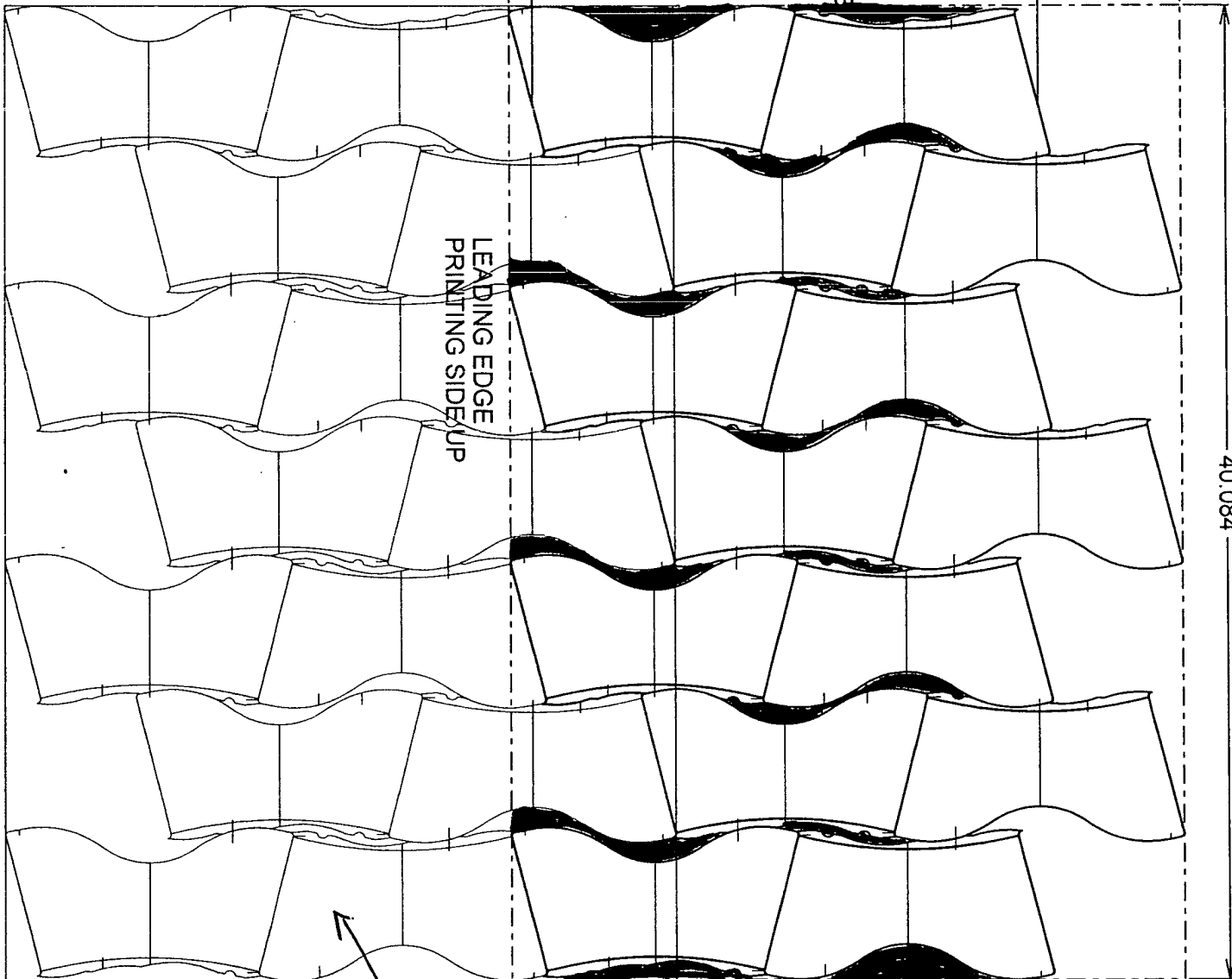
LEADING EDGE  
PRINTING SIDE/UP

GRAIN DIRECTION

Noted paper board  
for every 14 Fry  
Cups.

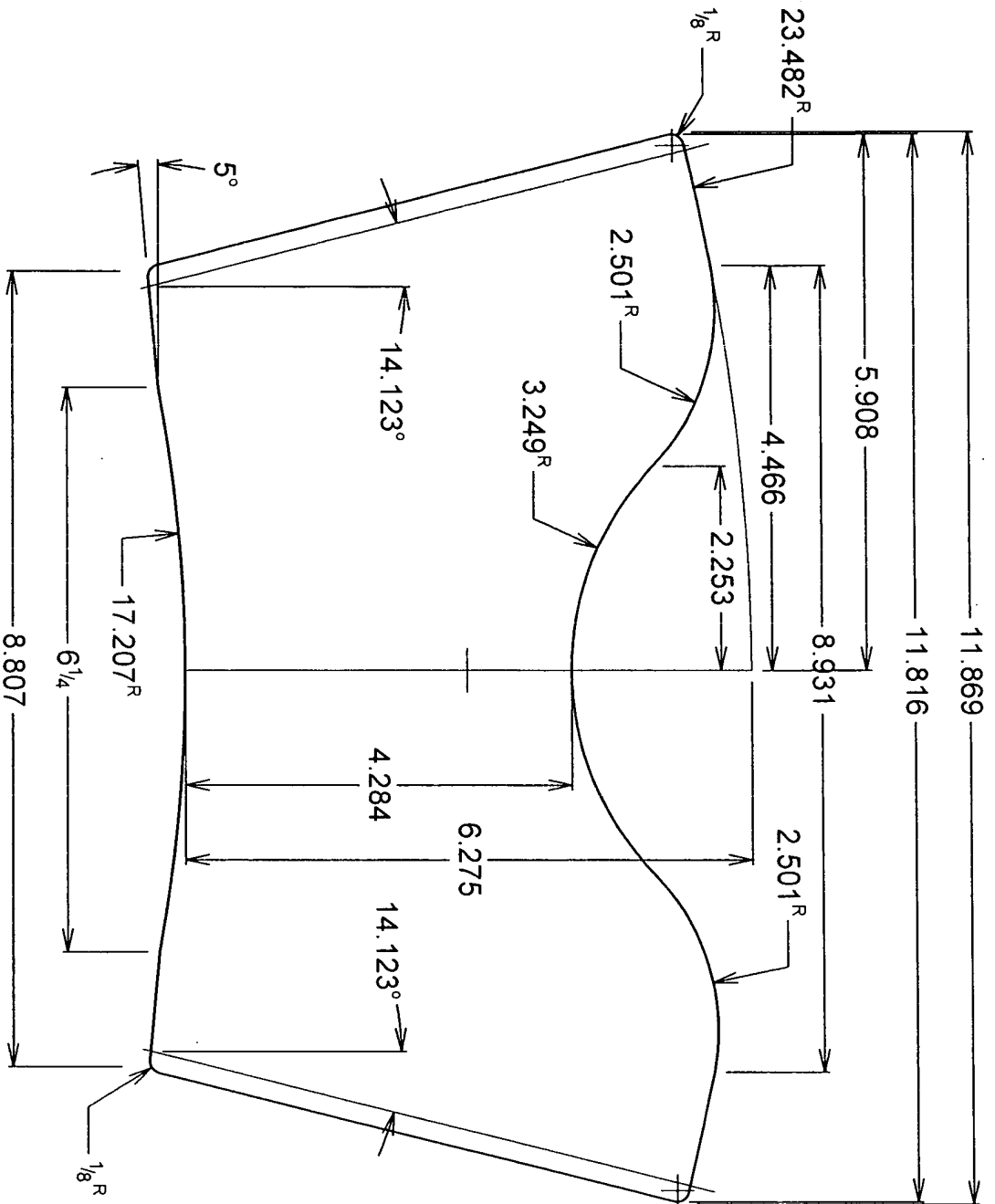
next  
impression

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Attach. 2



Grain Direction >===>

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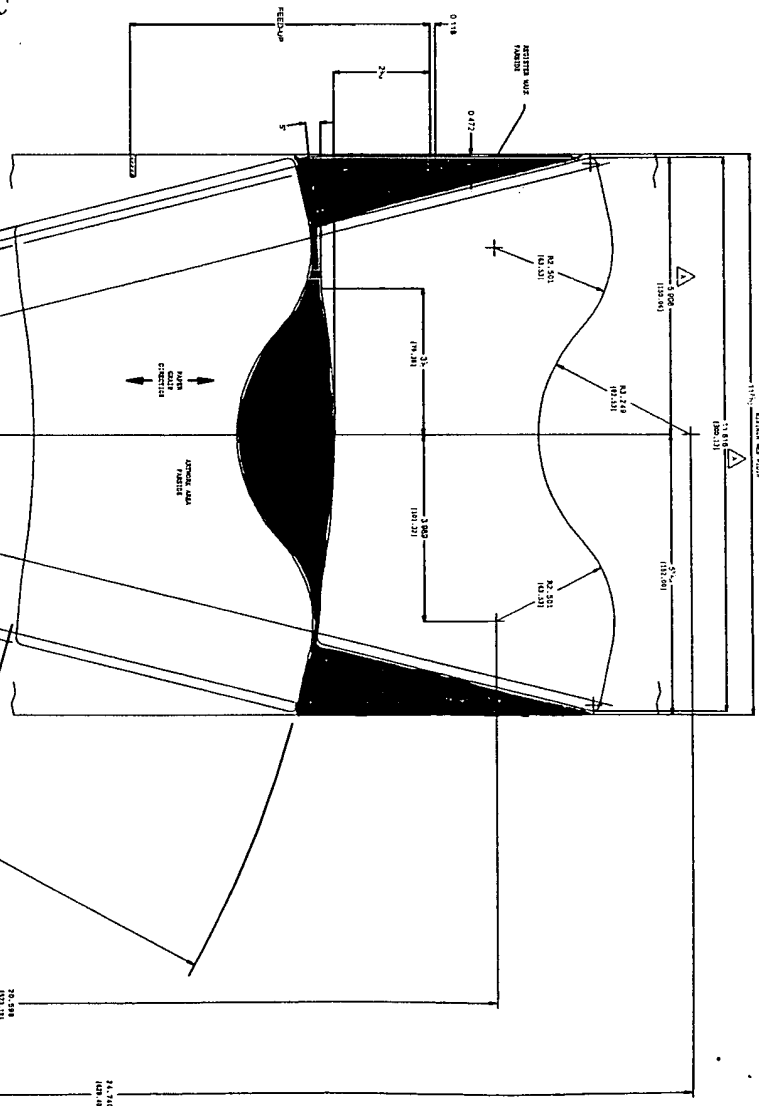
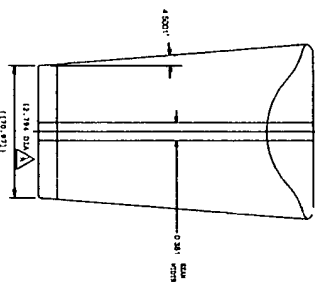
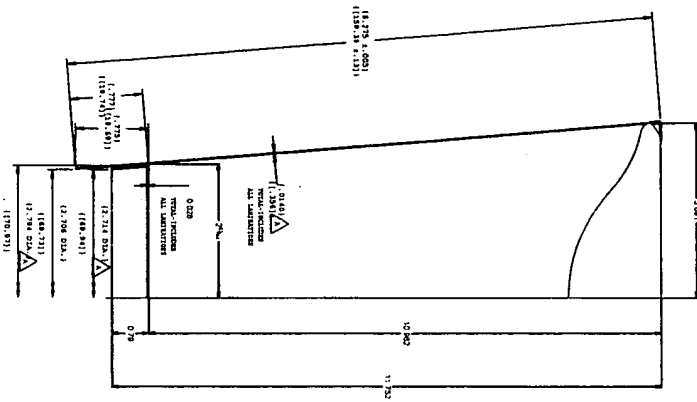
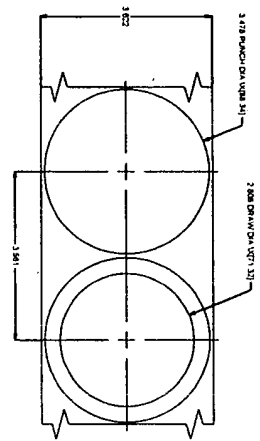
Fry cup Top OD 3.691, Cup Height 5.876, Angle 4.5 degree, Seam Width 3.81, Bottom Depth .395, Punch DIA 3.478, Feedup 3.561, Web Width 3.622 Wendy's Great Biggie Fry Cup, Structure from Conference Cup Printed Side Shown

*Original Structure*

Customer(s): Wendy's

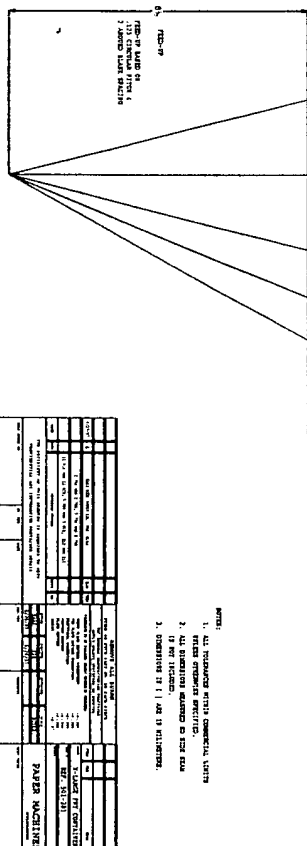
CAD

Item: <b>Great Biggie</b>	Size: <b>Use 32 oz Cold Cup Tooling</b>	Area: <b>56.476</b>	Printed Side Shown
Design #: <b>WDF01</b>	Material: <b>.015 Wall</b>		Dopaco Inc.
Style of Carton: <b>Conference Fry Cup</b>	Date: <b>10/21/2002</b>		Design Department

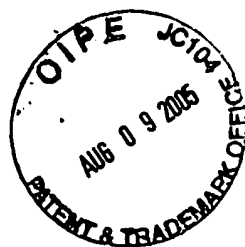


Wasted paper board  
for making one Fry's cup

76.3 SQ INCHES  
PER UNIT.



PAPER MACHINE CORPORATION	
1. ALL DIMENSIONS ARE IN INCHES, UNLESS OTHERWISE SPECIFIED.	
2. ALL DIMENSIONS ARE TO BE TAKEN FROM THE CENTER OF THE CUP.	
3. DIMENSIONS ARE TO BE TAKEN FROM THE CENTER OF THE CUP.	



Set #2 Mar 15th

Cup Rigidity Tester used to measure force to deflect BK King Carton 1/4" travel of compression.  
Compression on side panels, centered, roughly 2/3 up from bottom of carton ( 5 5/8")

Liming made ctn's.

Flush cut tops (not exact BK ctns)

Gauge	Grade	Compression Ctn grain	Side MD Oriet	panels CD Oriet
012	S'cycle SBS		0.166	0.354
014	S'cycle SBS		0.164	0.294
015	Kraftpak		0.198	0.524
016	S'cycle SBS		0.216	0.392
017	Kraftpak		0.188	0.424
018	S'cycle SBS		0.21	0.506
020	S'cycle SBS c/2/s		0.302	0.526
022	S'cycle SBS		0.25	0.566
023	S'cycle SBS		0.336	0.938
			0.452	0.878
			0.516	1.194
			0.648	1.118
			0.532	1.57
			1.226	1.8

Tested at D'tn plant, 15 March 2001 by G. Casper

Attachment 3.